

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING 99-22**

WARNING

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

Sales and use tax liability on purchase and/or lease of aircraft by Taxpayer for use in providing interstate and international air charter service.

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the department by the taxpayer. The rulings herein are binding upon the Department and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time.

Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling; and a retroactive revocation of the ruling must inure to the taxpayer's detriment.

FACTS

[THE TAXPAYER] is an air charter company providing air charter service to its customers. The U. S. Department of Transportation, Federal Aviation Administration reissued air carrier certificate [NUMBER] to the Taxpayer on [DATE]. The Federal Aviation Administration approved the Taxpayer's operation specifications on [DATE], authorizing Taxpayer to operate in all 50 states, as well

as a number of foreign countries. At least 90% of the actual use of the Taxpayer's aircraft will be for travel to points outside of Tennessee. In providing charter service to its customers, the Taxpayer maintains continuous supervision of the aircraft and furnishes the pilot and crew to operate the aircraft while in service.

QUESTION

Is the purchase and/or lease of airplanes by Taxpayer, to be used in providing interstate and international air service as described above, subject to Tennessee sales or use tax?

RULING

The purchase or lease of airplanes for use in interstate and international air charter service is not subject to Tennessee sales or use tax.

ANALYSIS

T.C.A. § 67-6-302 provides:

(a) There is exempt from sales or use tax, the sale, use, storage or consumption of aircraft owned or leased by commercial interstate or international air carriers, and parts, accessories, materials and supplies sold to or used by commercial interstate or international air carriers for use exclusively in servicing and maintaining such carriers' aircraft, which aircraft are used principally in interstate or international commerce. This exemption shall not apply to fuel and other petroleum products or to shop equipment and tools.

This exemption would serve to exempt from sales or use tax an aircraft leased by a commercial interstate or international air carrier if such aircraft were used principally in interstate or international commerce. "Commercial interstate or international air carrier" is not defined in the sales and use tax statute. "[I]ndefinite and unclear words in the statute must be given such interpretation as will express the legislature's intention and purpose." Loftin v. Langsdon, 813 S.W.2d 475, 479, (Tenn. App. 1991), quoting Hood v. State, 187 Tenn. 501, 216 S.W.2d 14 (1948). In determining legislative intent, whenever possible, one should use the plain language of the statute, "read in the context of the entire statute, without any forced or subtle construction which would extend or limit its meaning." National Gas Distributors, Inc. v. State, 804 S.W.2d 66, 67 (Tenn. 1991). Taxpayer holds an air carrier certificate issued by the FAA. It has filed "operations specifications" with the FAA authorizing it to operate in all 50 states, as well as in foreign countries. The majority of the actual use of the aircraft will be for travel to points outside of Tennessee. Therefore, Taxpayer is the type of carrier intended by this statute, and its leasing of an aircraft to be used principally in interstate commerce would be nontaxable.

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